

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
FEBRUARY 24, 2017

Gambling Control Board Conference Room  
Department of Public Safety  
45 Commerce Drive, Augusta, Maine

Commission Members Present: William Varney, Chair, William McFarland, Michael Graham, and Alexander Willette

Commission Members Absent: Gary Reed

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Betty Farr, and Miles Greenleaf

**1. Call the Meeting to Order and Introductions:** William Varney, Chair

**2. Public Hearing on Proposed Rule Amendments for Chapters 9, 11, and 17**

Commissioner Varney stated that we will have a public hearing on the proposed rules. Mr. Jennings stated that the staff filed a notice of agency rulemaking proposal that was published in the 5 daily newspapers on February 1, 2017. We will take comments and the close of the written comment period will be at 5:00 p.m. at the end of business on March 6, 2017. He stated that in Chapter 9, Section 6 on page 6 the following sentence would be added, "in all Maine Sire Stakes events all starters have to be on the gate". In Chapter 11, staff decided to do a repeal and replace of the rule. In Chapter 17, he changed the inconsistency of the fines and tables. Most of the other changes were in Section 6 and the new Section 7. Diann Perkins representing the Maine Standardbred Breeders and Owner's Association stated that she would have Wendy Ireland their new president make public comment. Ms. Ireland read into the record the handout sheet. She stated that the owners pay a considerable amount of money and they want their horse's noses on the gate. When trailing horses are used there is a significant safety issues especially with young horses. This would give the owners an opportunity for a fair shake at the gate. Ms. Ireland also handout a letter from Roger Smith regarding the safety issues of the horses. Commissioner Varney asked what it would do to the finals. Ms. Ireland stated that there would be an increase in the legs and a decrease in the finals. Commissioner Varney asked for any more comments. Dick Shier stated that if you have no trailers there will be short fields and that will create a lot of non-betting races. People might look at that in a negative way. Commissioner Varney closed the hearing on Chapter 9. Ms. Ireland stated that the reason this rule change was discussed and put forth by the Fairness Committee was that they were taxed by how to spread the money around. She stated that they look at those 4 or 5 owners that receive a large amount of money. This would be a way for more owners to receive money. Ms. Ireland addressed the Commission as an owner/trainer. She has a concern about eliminating mitigating circumstances in Chapter 17. Commissioner Willette stated it still gives a wide range of latitude. It just says the minimum penalty. You can't go below the minimum penalty. What's the point if we go below the minimum penalty? This just clarifies the minimum. AAG, Guay stated that he is giving the Commission advice on applying the rule as written. He stated that you would still be able to consider mitigating circumstances. There is still a range. This change takes out of the finding and the hearing process the need to explore whether there are mitigating and aggravating circumstances. He suggest to the Commissioners to set the minimum at what you have been setting fines at. It was discussed whether to eliminate veterinarians from Chapter 17. There was also a discussion on the 30 to 180 day suspension in Chapter 17, Section 7.6. AAG, Guay asked if under Chapter 17, Section 16 and the rule reads "No horse may compete while owned or controlled wholly

or in part by a suspended, expelled, disqualified, or excluded person". Is the intent of the Commission that if a person is a part owner with an individual who is a 5% owner of the horse and the other is 95% and that person is suspended does that mean that the horse that is 95% owned by the owner cannot compete. The Commissioners agreed that the horses cannot race. Commissioner Varney stated that at least 3 maybe 4 of the Commissioners want to let it stand. On a transfer if somebody wants to go and transfer that ownership to eliminate the 5% on another horse they can do so but it has to be approved by the Commissioner. AAG, Guay stated that he will do his full efforts to defend the Commission's decision. Craig Hall wanted to clarify the horse transfer if there is more than one owner. Commissioner Varney stated that if you're a trainer and you get suspended then any horses you own or in partnership cannot race until your suspension is over. AAG, Guay stated that there is one other issue that comes up all the time. Chapter 17, Section 19 and the rule reads "Any Association willfully allowing the use of its grounds by an expelled or unconditionally suspended person or horse, together with its officers, shall be subject to suspension or expulsion." This is an opportunity for the Commission to give texture in terms of what you believe the use of grounds is. One would be the grounds of the association is whatever the grounds of the facility that is contained in the license and the other is that it is specific to the grounds related to the harness racing. For example, if there is harness racing at the Farmington Fair and a person is suspended does being on the ground of the association mean that they are in the paddock and all the areas associated with harness racing or does that mean that they cannot go to the midway. Commissioner Varney stated that it should be clarified. Commissioner Willette stated that it might be the term "use". Mr. Jennings stated when does this apply because some of the fairgrounds stable horses year round, but they're only licensed to conduct harness racing during that period when the fair is opened. Are they able to be on the grounds when there is no racing? Commissioner McFarland stated that this has always been a gray area. As a race director at Windsor, he was willingly to monitor the year round horse racing venue. Windsor is a training track. He would welcome a thorough look at this in order to be fair. It has been in the past that it was deemed that the racing areas that the people in violation were expelled from even during the licensed fair dates. Commissioner Willette stated if you narrow the language down to the portion of the grounds where the harness racing licenses is required to access. He thinks Commissioner McFarland is very much correct that a lot of these people that sell tickets at the door are volunteers and would have no clue who is suspended from the harness racing industry. He thinks that expulsion is pretty intense. Commissioner Varney stated that part of the grounds they don't require a license to train when the fair is not going on. AAG, Guay asked if they are prohibited from participating in racing or are they prohibited from training which is what they are prohibited from doing. Commissioner McFarland stated that in the past it has been from training. There were at least 2 people who were suspended on their grounds and they were not allowed on the grounds to participate in harness racing activities including training. Commissioner Graham stated that there was a gentleman barred from racing and was at all the fairs, but nobody did anything about it. AAG, Guay suggest that the way you think of it is that wherever the public can go a person can go. Theoretically controls of where licensed people can and can't do and that is the stuff that they shouldn't be able to do. Dick Shier stated that he doesn't believe the Commission has authority to penalize people from the association when there is no harness racing. AAG, Guay stated that he thinks Mr. Shier is right, the tracks as private land owners have the right to exclude anyone as long as it's not discriminatory from any use of the facility, but the problem is what we have here is whether or not the Commission can penalize these. They need guidance from us. Roger Smith stated that in Illinois they license the training facilities because of this reason that way the Commission has full authority to come in and investigate. Commissioner McFarland stated that they are a licensed Agricultural Fair for nine days. He would like to know what jurisdiction this Commission has with respect with individuals participating beyond the time they are licensed as an association. Commissioner Willette stated that it would be very unreasonable to enforce the rules as they are right now at his home fair, Northern Maine Fair.

These people that are working the gates and running the pari-mutuels volunteer and there is no way that Northern Maine Fair would be able to educate and ensure that these people never mess up. He suggested putting the word “knowingly” in front of the word “willingly”. He also stated that he was not too concerned about the betting area for the violator. Commissioner Graham stated that he doesn’t think the ticket seller should be one responsible anyway. He thinks the State Steward should be. Ms. Perkins stated that the directors of racing should be informed of who these people are. She stated that there was a person in the grandstand at the Fryeburg this year that was barred for life on the grounds of the association. There is a lot of the public that do not want people like that on the grounds. He was also in the winner’s circle. Ms. Ireland stated that what you are asking people to do is to control who is in the betting area. There is no way you can police this. She doesn’t have a concern about the betting area either. Commissioner Varney stated to change it to racing facilities and take out expulsion. There were no comments for Chapter 11.

### **3. Review and Approval of Minutes**

#### **Review and Approval of Decisions and Orders**

Commissioner Varney asked for a motion to approve the minutes of August 11, 2016, September 16, 2016 September 23, 2016 and October 21, 2016. Commissioner Willette made a motion to approve the minutes as presented. Commissioner McFarland seconded. Vote 4-0.

Commissioner Varney asked for a motion on the decision and order for Michael Hitchcock CN 2016 MSHRC 15, 19, and 24. Commissioner McFarland made a motion to approve the decision and order for Michael Hitchcock CN 2016 MSHRC 15, 19, and 24 as written. Commissioner Graham seconded. Vote 3-0.

Commissioner Varney asked for a motion to approve the decision and order for Michael Hitchcock CN 2016 MSHRC 18. Commissioner McFarland made a motion to approve the decision and order for Michael Hitchcock CN 2016 MSHRC 18 as written. Commissioner Graham seconded. Vote 3-0.

Commissioner Varney asked for a motion to approve the decision and order for Gerald Laughlin CN 2016 MSHRC 22 and 23. Commissioner McFarland made a motion to approve the decision and order for Gerald Laughlin CN 2016 MSHRC 22 and 23 as written. Commissioner Graham seconded. Vote 3-0.

### **4. Adjudicatory Hearings:**

AAG, Guay updated the Commission on the Cobalt cases. He stated that the State submitted their brief in August and then there was a reply brief submitted by the defendants in October. Shortly after December, he called the court for a schedule when there will be oral arguments and he was informed by the clerk that the judge was not going to schedule oral arguments, but rather the judge was going to be issuing a decision on the briefs; and the judge was reviewing the record and they have done some preliminary drafting. He believes that conversation was approximately 6 to 8 weeks ago. AAG, Guay stated that he should be receiving a decision any day.

- a. RE: Craig Hall, Complaint Number 2016 MSHRC 21.** Mr. Hall is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hall is trainer of record for the horse “Dontmeswiththebest”. A blood sample obtained from Dontmeswiththebest following the Twelfth Race at the Windsor Fair on September 5, 2016 disclosed the presence of HEPS (2-(1 hydroxyethyl) promazine sulfoxide). Craig Hall was present and represented himself. AAG, Guay gave Mr. Hall his oath. He qualified the Commissioners. There were no objections by Mr. Jennings or Mr. Hall. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer’s License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Hearing; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment

Sheet; Exhibit 7, LGC Laboratory Certificate of Analysis, and Exhibit 8, ARCI Guidelines. AAG, Guay admitted the exhibits with no objection. He asked Mr. Hall if he stipulates to being the trainer of record for the horse "Dontmeswiththebest" on September 5, 2016 and that the horse raced during the 12<sup>th</sup> race at Windsor Fair on September 5, 2016. Mr. Hall stated yes. AAG, Guay asked Mr. Hall if he admits that the horse "Dontmeswiththebest" had the presence of HEPS in its system on September 5, 2016. Mr. Hall stated no. Mr. Jennings stated that HEPS was in the horse "Dontmeswiththebest". Mr. Hall did not ask for a split sample. He stated that the States position is there is adequate evidence that there was HEPS in the blood sample. AAG, Guay asked Mr. Hall if he requested a split sample. Mr. Hall stated no. AAG, Guay stated that exhibit 7 states that the drug was in the horses system. Mr. Hall stated that the blood work shows the drug was in the horses system but he did not give the horse the drug. He spoke with Dr. Matzkin and he told Mr. Hall that this drug was administered close to the race. He also stated that three days before this happened he approached the State Steward, and the Judge appealed the race not this race but a race and made a stink about how the Commission rules were not being abided by. The judge did nothing about it so he appealed the race to freeze the purse. Mr. Hall feels that he was set up. AAG, Guay asked if the Commission had any questions. There were none. He turned it over to the Commission for deliberations. Commissioner Varney asked for any discussion. Commissioner Graham was upset with what happened. He made a motion to find Mr. Hall guilty of the trainer responsibility rule. Commissioner Willette seconded. Vote 4-0. AAG, Guay asked Mr. Jennings for recommendation on the penalty. Mr. Jennings stated that exhibit 8, ARCI drug classification guidelines of A-promazine was administered. This is a Class B drug so then you go to Chapter 17 for a Class B penalty the minimum penalty is 15 day suspension, \$500 fine, and the loss of purse. AAG, Guay asked if A-promazine is the same as 1 hydroxyethyl promazine sulfoxide. Mr. Jennings stated no. He called Dr. Matzkin as a witness. AAG, Guay gave Dr. Matzkin his oath. He stated to Dr. Matzkin that Mr. Jennings had indicated that A-promazine is the appropriate substance classification for the substance that was found in the system of the horse. Do you agree that is the appropriate classification substance? Dr. Matzkin stated that he does. A-promazine is broken down very quickly in the body. It is much easier one to find. According to Dr. Sams, this is a high level. AAG, Guay asked if it is reasonable to conclude not speculate that the presence of HEP indicates the presence of A-promazine. Dr. Matzkin stated yes. Mr. Hall had no questions. Commissioner Varney asked about how long would that break down. Dr. Matzkin stated that in about 48 hours it would be gone. AAG, Guay asked Mr. Hall if he had anything else. Mr. Hall asked if the Commission has always gone by this new system. Commissioner Varney stated that A-promazine has always been a Class B drug. AAG, Guay stated that in Chapter 11, Section 10 does make some reference to ARCI for list of drug classes. He closed the hearing for deliberations. Commissioner Varney asked for any discussion. Commissioner Graham made a motion to a 15 day suspension, \$500 fine, and the return of purse within 30 days. Commissioner Willette seconded. Vote 4-0.

## **5. Discussion of the Consent Agreement Process and Commission Delegation**

Mr. Jennings stated that at one of our meetings there was a discussion about whether it might be more efficient to resolve some drug cases by a consent agreement when the trainer and the owner agree to the minimum penalty because the owner has to return the purse, and the Commission said it makes more sense. What was unclear to the staff was the approval process. He stated that in delegating, are you delegating to the staff to enter into that agreement and just bring it back for your information to see that cases were resolved, or did you feel a need to approve each consent agreement before its finalized. Commissioner Varney stated that if you get the purse back, do it, and inform them of who and what you've done. AAG, Guay stated that because he is the last

signature on the page he is saying that there was proper authorization for the document to become effective. You are delegating to the executive director to enter into an agreement without approval by the Commission because you are approving ahead of time that if someone wants to voluntarily resolve their case he is authorized to do so at the minimum penalty level. Commissioner Varney stated that was correct. At least the minimum penalty level. They need to be informed of those, and what the penalty was, and who the violator was. Commissioner Willette stated that he was fine with that as long as if it's a second offense it's the minimum of the second offense and if it's a third offense it's the minimum for the third offense. Mr. Jennings stated that he would agree with that. Commissioner Varney stated that if you just do the first offense now to see how it works. AAG, Guay asked if it is for all penalty classes, A, B, and C. Commissioner Graham stated that he questions maybe hearing A; B and C he has no problem with that. Commissioner Willette stated that if the trainer is willing to take that hit voluntarily, he doubts they would take that. Commissioner McFarland stated that he agrees. Mr. Jennings asked if AAG, Guay wanted a motion and a vote on the issue. AAG, Guay stated yes, and that the motion would be for a specific delegation to the executive director to enter into consent agreements for first offenses of Chapter 11 violations regardless of penalty class. Commissioner Willette made a motion to the above statement by AAG, Guay. Commissioner McFarland seconded. Vote 3-1. Commissioner Graham opposed.

**6. Approval of Maine Harness Horseman Association Proposed Budget**

Commissioner Varney stated the next item is approval of the MHHA's proposed budget. Debbie Patterson representing the MHHA presented the proposed budget. Commissioner McFarland asked Ms. Patterson about line 18, and line 21. Ms. Patterson stated that line 18 was the legislative issue and line 21 was when they hired Craig Rancourt for the purse account. Commissioner Varney asked if there were any other questions or a motion. Commissioner Graham made a motion to approve the Maine Harness Horsemen's Association Budget. Commissioner Willette seconded. Vote 4-0.

**7. Public Comment**

Commissioner Varney asked for public comment. Dick Shier addressed the Commission regarding the authorization of the executive director to take on some of the responsibility of the first offenders. At Rosecroft when a horse had a prohibited substance in its system, they would come down immediately. They had a full time Commission which consisted of a presiding judge, a state steward, and three commissioners that worked full time. You just walk in and pleaded guilty, returned the purse money, and paid your fine, they would put your horse back in the box. This is similar to what you're going to do here. Mr. Jennings stated it depends on the minimum penalty. Commissioner Willette stated it doesn't change anything from what we currently are. It just allows them to resolve their issues before we are able to meet.

**8. Schedule of Future Meetings:**

March 30, 2017

**9. Adjourn**

11:57 a.m.